

Montana Association of Conservation Districts
501 North Sanders • Helena, MT 59601



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A Guide to
stream permitting
in Montana

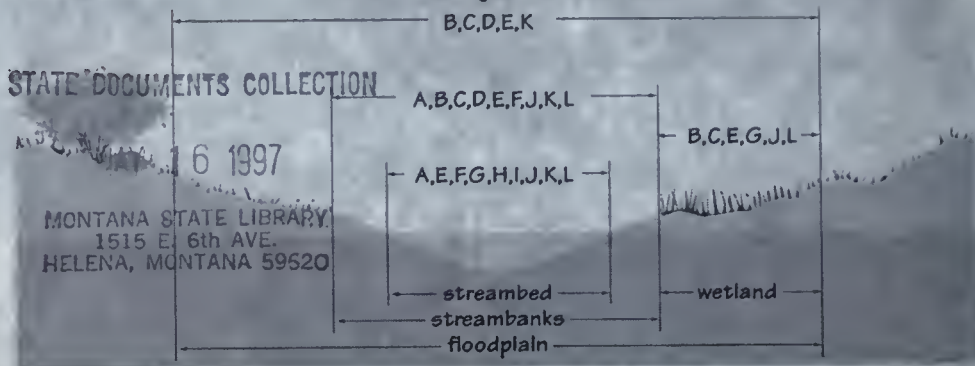
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IN MONTANA

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GUIDE TO REQUIRED PERMITS



This brochure was cooperatively developed and funded by the Montana Association of Conservation Districts; the Montana Department of Natural Resources and Conservation; the U.S. Environmental Protection Agency; the Montana Department of Environmental Quality; the Montana Department of Fish, Wildlife and Parks; and the Montana Watercourse.

First Issued April 1990
Revised June 1993 and March 1997



Confederated Salish and Kootenai Tribes Water Quality Program

Ordinance 89-B prohibits pollution of Flathead Reservation waters. All projects affecting reservation waters must be permitted in accordance with tribal water quality standards. All federally permitted point source discharges require certification under Section 401 of the Clean Water Act in order to ensure that permit conditions will maintain tribal water quality. The tribes were delegated 401 certification authority by EPA in 1995.

Contact:

Tribal Water Quality Program
Environmental Protection Division
P.O. Box 278
Pablo, MT 59855
(406) 675-2700 ext. 369

National Pollutant Discharge Elimination System (NPDES) Permit

The Environmental Protection Agency (EPA) is the NPDES permitting agency on the Flathead Reservation. Applications for point source discharge permits must be submitted to:

EPA Compliance Officer
Region VIII, Montana Office
301 South Park, Drawer 10096
Helena, MT 59626-0096

Copies of all these NPDES forms are available upon request in the tribal NPDES office.

Permitting of stormwater discharges is also part of the NPDES program. Therefore, for all projects that may result in discharges of stormwater into reservation surface waters, submit a Notice of Intent (NOI) and Notice of Completion (NOC) to:

Contact:

Stormwater Program
EPA Region VIII
999 18th Street
Denver, CO 80202-2466

Tribal NPDES Office
Environmental Protection Division
P.O. Box 278
Pablo, MT 59855
(406) 675-2700 ext. 467

Using the diagram above, determine where your project will take place: streambed, streambanks, wetlands, or floodplain. The letters in the diagram refer to the required permits listed below and described on the following pages.

Permits that may be necessary:

- A. Montana Stream Protection Act (SPA 124 Permit)
- B. Storm Water Discharge General Permits
- C. Streamside Management Zone Law
- D. Montana Floodplain and Floodway Management Act (Floodplain Development Permit)
- E. Short-Term Exemption from Montana's Surface Water Quality Standards (3A Authorization)
- F. Montana Natural Streambed and Land Preservation Act (310 Permit)
- G. Montana Land-Use License or Easement on Navigable Waters
- H. Montana Water Use Act (Water Right Permit and Change Authorization)
- I. Montana Water Use Act (Water Reservations)
- J. Federal Clean Water Act (404 Permit)
- K. Federal Rivers and Harbors Act
- L. Other laws that may apply, depending upon your location and activity

A. MONTANA STREAM PROTECTION ACT (SPA 124 Permit)

Any agency or subdivision of federal, state, county, or city government proposing a project that may affect the bed or banks of any stream in Montana.

Activities Requiring a Permit

Any project including the construction of new facilities or the modification, operation, and maintenance of an existing facility that may affect the natural existing shape and form of any stream or its banks or tributaries.

Purposes of the Law

- To protect and preserve fish and wildlife resources.
- To maintain streams and rivers in their natural or existing state.

Contact:

Permitting and Compliance Division
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
(406) 444-2544

Montana Water Quality Act

Prohibits the pollution of state waters and the placement of wastes in a location where they are likely to cause pollution of any state water.

Contact:

Department of Environmental Quality
1520 Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
(406) 444-2544

Public Water Supply Watersheds

Requires the submission, review, and approval of detailed plans and specifications before beginning the construction or operation of any new railroad, logging road, logging camp, or electric or manufacturing plant in a public water supply watershed.

Contact:

Department of Environmental Quality
Avenue 1520 East Sixth
P.O. Box 200901
Helena, MT 59620-0901
(406) 444-2544

Shoreline Protection and Aquatic Land Conservation Ordinance

Applies to all private individuals and government entities proposing to work in, over, or near any stream, river, lake, or wetland on the Flathead Reservation.

Contact:

Shoreline Protection
Flathead Reservation Tribal Complex
P.O. Box 278
Pablo, MT 59855
(406) 675-2700 ext. 368

L. OTHER LAWS THAT MAY APPLY

County Septic System Regulations

Apply to anyone proposing to construct, alter, extend, or operate a sewage treatment and disposal system. Conventional systems must be 100 feet from the 100-year floodplain and 6 feet from groundwater. Alternative designs that are 4 to 6 feet from groundwater must be approved.

Contact: County Sanitarian

General Mining Laws/Small Miner's Placer and Dredge Operations

Apply to anyone operating a placer, dredge, hardrock, coal, sand, or gravel mine on private or public land.

Contact:

Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
(406)444-2544

Lakeshore Protection Act

Applies to all private individuals and government entities proposing to do work in or near a body of water within a county's jurisdictional area.

Contact: County Government Offices

Montana Dam Safety Act

Applies to the construction, repair, or removal of any dam that impounds 50 acre-feet or more at the normal operating pool.

Contact:

Dam Safety Program
Water Operations Bureau
Department of Natural Resources and Conservation
48 North Last Chance Gulch
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6610

Montana Pollutant Discharge Elimination System (MPDES Permit)

Applies to all discharges to surface water or groundwater, including those related to construction, dewatering, suction dredges, and placer mining.

Who Administers the Law

Department of Fish, Wildlife and Parks (DFWP).

Application Procedure/Timeline

Any agency or unit of government planning a project must submit a Notice of Construction (application) to the Department of Fish, Wildlife and Parks, which has up to 60 days to review the application, perform an on-site investigation, and approve, modify, or deny the application. There is no application fee.

For more information contact:

Habitat Protection Bureau
Fisheries Division
Department of Fish, Wildlife and Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 444-2449

B. STORM WATER DISCHARGE GENERAL PERMITS

Who Must Apply

Any person, agency, or entity, either public or private, proposing construction, industrial, or mining activity that will discharge storm water to state waters.

Activities Requiring a Permit

- Construction activity that will disturb more than 5 acres total or more than 1 acre total if that acre is located less than 100 feet from state waters.
- Industrial activity that will discharge storm water as a point source to state waters.
- Mining or oil and gas activity in which storm water will come into contact with overburden, raw material, intermediate products, finished products, or waste products located on the site of such operations (including active and inactive mine sites) and discharge to state waters.

Purposes of the Law

- To prevent degradation of state waters from pollutants such as sediment, industrial chemicals or materials, heavy metals, and petroleum products.
- To protect existing water quality.
- To monitor the effectiveness of best management practices used to reduce pollutant loads.

K. FEDERAL RIVERS AND HARBORS ACT

Who Must Apply

Any person, agency, or entity, either public or private, proposing any alteration of, or any construction activity in, on, or over any federally-listed navigable water of the United States.

Activities Requiring a Permit

The construction of any structure in or over any federally-listed navigable waters of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters. Navigable waters in Montana are the Missouri River from Three Forks downstream to the Montana-North Dakota border, the Yellowstone River from Emigrant downstream to its confluence with the Missouri River, and the Kootenai River from the Canadian border downstream to Jennings, Montana.

Purpose of the Law

- To protect the quality and quantity of navigable waters of the United States.

Who Administers the Law

The U. S. Army Corps of Engineers (Corps).

Application Procedure/Timeline

Applications must be submitted to the Corps for review. Project approval may take 60 to 90 days. Application fees for individual permits may vary from \$10 for private individuals to \$100 for commercial applicants.

For more information, contact:

U. S. Army Corps of Engineers
301 South Park, Drawer 10014
Helena, MT 59626-0014
(406) 441-1375

J. FEDERAL CLEAN WATER ACT (404 Permit)

Who Must Apply

Any person, agency, or entity, either public or private, proposing a project that will result in the discharge or placement of dredged or fill material into waters of the United States. "Waters of the United States" include lakes, rivers, streams, wetlands, and other aquatic sites.

Activities Requiring a Permit

Any activity that will result in the excavation, discharge, or placement of dredged or fill material into waters of the United States, including wetlands.

Purpose of the Law

- To restore and maintain the chemical, physical, and biological integrity of the nation's waters.

Who Administers the Law

The U. S. Army Corps of Engineers (Corps). The Environmental Protection Agency also has regulatory review and enforcement functions under the law.

Application Procedure/Timeline

Any person, agency, or entity, either public or private, planning a project must submit an application to the Corps for review. Permit authorization varies depending on the size and scope of the intended project. Activities that meet the conditions for a Nationwide or Regional General Permit may be approved in 10 days or less. Individual Permits are processed individually and require a public review period. Permit approval may take 60 to 90 days. Application fees for Individual Permits may vary from \$10 for private individuals to \$100 for commercial applicants.

For more information, contact:

U. S. Army Corps of Engineers
301 South Park, Drawer 10014
Helena, MT 59626-0014
(406) 441-1375

Who Administers the Law

Department of Environmental Quality.

Application Procedure/Timeline

An application must be submitted 30 days prior to beginning a construction project or starting operation of a new facility.

For more information contact:

Permitting and Compliance Division
(406)444-2544
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

C. STREAMSIDE MANAGEMENT ZONE LAW

Who Must Apply

Any landowner or operator conducting a series of forest practices that will access, harvest, or regenerate trees on a defined land area for commercial purposes on private, state, or federal lands.

Activities Requiring a Permit

This law prohibits the following timber harvest activities within at least 50 feet of any stream, lake, or other body of water. The Department of Natural Resources and Conservation must approve any exceptions to these prohibited practices.

- Broadcast burning.
- Operating wheeled or tracked vehicles except on established roads.
- Clear-cutting.
- Constructing roads in the Streamside Management Zone except when necessary to cross a stream or wetland.
- Handling, storing, applying, or disposing of hazardous or toxic material in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants.
- Casting road material into a stream, wetland, or watercourse.
- Depositing slash in streams or other water bodies.

Application Procedure Timeline

The application for reserved water use form is available at the local conservation district office or at the Conservation and Resource Development Division's offices in Miles City and Helena. An application fee is required. Contact the local conservation district to determine the appropriate fee.

For more information, contact:

The local conservation district
or

Conservation and Resource Development Division
Department of Natural Resources and Conservation
1625 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6667

or

Conservation and Resource Development Division
Department of Natural Resources and Conservation
5 North Prairie
Miles City, MT 59301
(406) 232-6359

I. MONTANA WATER USE ACT (Water Reservations)

Who May Apply

Any governmental entity may apply to reserve water for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water. Any person or entity that needs water for a new or existing development within the boundaries of a conservation district that holds a water reservation may apply to use a portion of the conservation district is water reservation.

Activities Qualifying for Use of Reserved Water

All beneficial uses, including such activities related to agriculture as irrigation and stockwater. A water reservation is granted for specific uses. Contact your local conservation district to determine whether it has been granted a water reservation and whether your proposed use is authorized under that water reservation.

Purposes of the Law

- To provide water for existing and future beneficial uses of water.
- To maintain a minimum flow, level, or quality of water.

Who Administers the Law

The Water Rights Bureau, Department of Natural Resources and Conservation, administers the water reservations that were granted by the Board of Natural Resources and Conservation.

The local conservation district authorizes the use of its water reservation and administers the individual reserved water use authorizations. The Conservation and Resource Development Division, Department of Natural Resources and Conservation, provides technical and administrative assistance to the conservation districts in preparing applications and developing their reservations.

The Water Rights Bureau, Department of Natural Resources and Conservation, administers the water reservations that were granted by the Board of Natural Resources and Conservation.

Purposes of the Law

- To protect the quality and quantity of forest waters.
- To conserve the integrity of Montana's streamside zones.

Who Administers the Law

Department of Natural Resources and Conservation (DNRC).

Application Procedure/Timeline

DNRC must be notified prior to beginning any forest practice. A request to conduct an alternative practice must be submitted to the appropriate DNRC field office. Alternative practices will require an environmental review. The request will be reviewed and an initial response issued within 10 days.

For more information contact:

Forestry Division
Department of Natural Resources and Conservation
2705 Spurgin Road
Missoula, MT 59801
(406) 542-4300
or
Local DNRC Land Office

D. MONTANA FLOODPLAIN AND FLOODWAY MANAGEMENT ACT (Floodplain Development Permit)

Who Must Apply

Anyone planning new construction within a designated 100-year floodplain. Check with local planning officials or the Floodplain Management Section of the Department of Natural Resources and Conservation to determine whether a 100-year floodplain has been designated for the stream of interest.

Activities Requiring a Permit

New construction including, but not limited to, placement of fill, roads, bridges, culverts, transmission lines, irrigation facilities, storage of equipment or materials, and excavation; new construction, placement, or replacement of manufactured homes; and new construction, additions, or substantial improvements to residential and commercial buildings.

Purpose of the Law

- To restrict floodplain and floodway areas to uses that will not be seriously damaged or present a hazard to life, if flooded, thereby limiting the expenditure of public tax dollars for emergency operations and disaster relief.

Who Administers the Law

Floodplain Development Permits are available from the local floodplain administrator, who may be the city/county planner, sanitarian, building inspector, town clerk, or county commissioner.

Purposes of the Law

- To provide a permit and certificate system of water rights administration similar to systems used in other Western states.
- To maintain a general adjudication of all existing water rights in the state.
- To implement a centralized record system in addition to the local courthouse records.

Who Administers the Law

Water Rights Bureau, Department of Natural Resources and Conservation (DNRC).

Application Procedure/Timeline

Water right application forms are available at all 56 county clerk and recorders' offices and at the eight Water Resources Regional Offices located in Billings, Bozeman, Glasgow, Havre, Helena, Kalispell, Lewistown, and Missoula.

Water right applications may take up to six months to complete. The water permit application fee is \$100.00. The fee for an application for change is \$100.00. The fee for a Certificate of Water Right on groundwater developments of 35 gallons per minute or less and 10 acre-feet or less is \$25.00.

For more information, contact:

Water Rights Bureau
Department of Natural Resources and Conservation
48 North Last Chance Gulch
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6610
or
Local DNRC Water Resources Regional Office

H. MONTANA WATER USE ACT (Water Right Permit and Change Authorization)

Who Must Apply

Any person, agency, or governmental entity intending to acquire new or additional water rights or change an existing water right in the state.

Activities Requiring a Permit

General Rule - A person must obtain a beneficial water use permit before commencing to construct new or additional diversion, withdrawal, impoundment, or distribution works for appropriation of groundwater over 35 gallons per minute or 10 acre-feet per year or for any surface water.

Exceptions - Groundwater appropriations of 35 gallons per minute or less and 10 acre-feet or less and stockwater impoundments of less than 15 acre-feet must first be appropriated and put to beneficial use before a water right will be issued.

Types of Water Rights

Provisional Permit - Grants the use of water for a specific amount and purpose.

Temporary Permit - The same as the provisional permit, except that it is short-term and has an expiration date.

Certificate of Water Right - Issued on groundwater appropriations of 35 gallons per minute or less and 10 acre-feet or less.

Authorization to Change - Allows an appropriator with a recognized water right to change the place of use, point of diversion, purpose of use, or place of storage and maintain the priority date of the initial water right.

Temporary Change - Allows an appropriator to change the water right temporarily for a period of up to ten (10) years, with a possible renewal of not more than ten (10) years. No authorization is required for the water right to revert to the original purpose, point of diversion, place of use, or place of storage after the term expires.

Application Procedure/Timeline

Permit applications are available from the local floodplain administrator or from the Department of Natural Resources and Conservation. Application fees are established by the local government and vary widely throughout the state. The application process may take up to 60 days.

Information and assistance may be obtained from:

Floodplain Management Section
Department of Natural Resources and Conservation
48 North Last Chance Gulch
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6610
or
Local Floodplain Administrator

E. SHORT-TERM EXEMPTION FROM MONTANA'S SURFACE WATER QUALITY STANDARDS (3A Authorization)

Who Must Apply

Any person, agency, or entity, both public and private, initiating a short-term activity that may cause unavoidable short-term violations of state surface water quality standards. The major application of this law relates to sediments and turbidity usually caused by construction activities.

Activities Requiring an Authorization

Any activity in any state water that will cause unavoidable short-term violations of water quality standards. "State water" includes any body of water, irrigation system, or drainage system, either surface or underground, including wetlands, except for irrigation water where the water is used up within the irrigation system and the water is not returned to other state water.

Purposes of the Law

- To provide short-term exemptions from water quality standards for certain activities carried out in accordance with conditions prescribed by the Department of Environmental Quality.
- To protect water quality.
- To minimize sedimentation.

Who Administers the Law

Department of Environmental Quality.

Billings, or Miles City. DNRC staff will review the application, conduct a field investigation if necessary, and file an environmental action checklist. A written report and recommendation is then submitted to the Special Use Management Bureau in Helena, which makes the final determination and recommends stipulations as necessary. A Land-Use License can normally be reviewed, approved, and issued within 60 days upon the payment of the \$25 application fee and a minimum annual rental fee set by the department. The license may be held for a maximum period of 10 years, with the ability to request renewal for an additional 10 years. An easement requires approval from the Board of Land Commissioners, which normally takes up to 90 days. The current easement application fee is \$50 with an additional easement fee that varies based upon 50 percent of the appraised value of the adjoining property.

For more information contact:

DNRC Land Office
or
Special Use Management Bureau
Department of Natural Resources and Conservation
1625 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-2074

G. MONTANA LAND-USE LICENSE OR EASEMENT ON NAVIGABLE WATERS

Who Must Apply

Any entity proposing a project on lands below the low water mark of navigable waters.

Activities Requiring a Permit

The construction, placement, or modification of a structure or improvement on lands below the low water mark of navigable streams. If in doubt, contact the Department of Natural Resources and Conservation land office with jurisdiction over the project area for a determination of the navigability of the stream and the location of the low water mark.

This permit program does not apply to mining activities in navigable streams or lakes.

Purposes of the Law

- To protect riparian areas and the navigable status of the water body.
- To provide for the beneficial use of state lands for public and private purposes in a manner that will provide revenues without harming the long-term capability of the land or restricting the original commercial navigability.

Who Administers the Law

Department of Natural Resources and Conservation (DNRC).

Application Procedure/Timeline

A DNRC land-use license or easement application, along with the nonrefundable application fee and the Application for Licensing Structures & Improvements on Navigable Water Bodies (Form DS-432), must be submitted to the appropriate Land Office, located in Kalispell, Missoula, Helena, Lewistown,

Application Procedure/Timeline

A 3A Authorization must be obtained prior to initiating a project. The authorization may be obtained from the Department of Environmental Quality, or may be waived by the Department of Fish, Wildlife and Parks during its review process under the Natural Streambed and Land Preservation Act (310 Permit) or the Stream Protection Act (SPA 124 Permit). Individual applications submitted to the Department of Environmental Quality are normally processed within 14 days. Authorizations waived under the 310 or SPA 124 permit processes correspond to the time frame under each permit system, usually 30 to 60 days. There is no application fee.

For more information contact:

Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901
(406) 444-2544

**F. MONTANA NATURAL STREAMBED AND
LAND PRESERVATION ACT
(310 Permit)**

Who Must Apply

Any private, nongovernmental individual or entity that proposes to work in or near a stream on public or private land.

Activities Requiring a Permit

Any activity that physically alters or modifies the bed or banks of a perennially-flowing stream.

Purposes of the Law

- To minimize soil erosion and sedimentation.
- To protect and preserve streams and rivers in their natural or existing state.

Who Administers the Law

The Board of Supervisors of the Conservation District in which the project takes place.

Application Procedure/Timeline

A person planning a project must contact the conservation district office to obtain a permit application prior to any activity in or near a perennially-flowing stream.

Once an application is accepted, an on-site inspection may be conducted by a team that consists of a conservation district representative; a Department of Fish, Wildlife and Parks biologist; and the applicant. The team makes recommendations to the conservation district board, which has 60 days from the time the application is accepted to approve, modify, or deny the permit. Local rules apply. There is no charge for a 310 permit.

For more information contact:

Local Conservation District
or
Montana Association of Conservation Districts
501 North Sanders
Helena, MT 59620
(406) 443-5711
or
Conservation Districts Bureau
Department of Natural Resources and Conservation
1625 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6667 Helena

